



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2017-0124; FRL-9976-95-Region 6]

Approval and Promulgation of Implementation Plans; Texas; Revisions to Permitting and Public Participation for Air Quality Permit Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving four revisions to the Texas State Implementation Plan (SIP) submitted on December 12, 2016 and February 21, 2017, specific to air quality permitting and public notice for air quality permit applications.

DATES: This rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2017-0124. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Adina Wiley, 214-665-2115,
wiley.adina@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means the EPA.

I. Background

The background for this action is discussed in detail in our February 14, 2018, proposal (83 FR 6491). In that document we proposed to approve four revisions to the Texas SIP that revise the New Source Review (NSR) permitting and public notice requirements. We received one supportive comment from the Texas Commission on Environmental Quality. We also received six anonymous comments.¹ These comments were not significant as they did not raise relevant points which, if adopted, would require a change in the agency’s proposed rule. The EPA is finalizing as proposed; no changes have been made as a result of the comments received.

II. Final Action

We are approving revisions to the Texas SIP that revise the NSR permitting and public notice requirements. We have determined that the revisions submitted on December 12, 2016 were developed in accordance with the CAA and EPA’s regulations, policy and guidance for NSR permitting. Therefore, under section 110 of the Act, the EPA approves the following revisions to the Texas SIP:

- Repeal of 30 TAC Section 116.120 – Applicability – adopted on November 2, 2016, and submitted on December 12, 2016;
- Repeal of 30 TAC Section 116.121 – Exemptions – adopted on November 2, 2016, and submitted on December 12, 2016;

¹ The comments are available in the docket for this rulemaking.

- Repeal of 30 TAC Section 116.122 – Contents of Compliance History – adopted on November 2, 2016, and submitted on December 12, 2016;
- Repeal of 30 TAC Section 116.123 – Effective Dates – adopted on November 2, 2016, and submitted on December 12, 2016;
- Repeal of 30 TAC Section 116.125 – Preservation of Existing Rights and Procedures – adopted on November 2, 2016, and submitted on December 12, 2016; and
- Repeal of 30 TAC Section 116.126 – Avoidance of Permit Applications – adopted on November 2, 2016, and submitted on December 12, 2016.

Additionally, we have determined that the revisions submitted on February 21, 2017, were developed in accordance with the CAA and EPA's regulations, policy and guidance for public notice for air permitting. Under section 110 of the Act, the EPA approves the following revisions into the Texas SIP:

- Revisions to 30 TAC Section 39.405 adopted on December 9, 2015, and submitted on February 21, 2017;
- Revisions to 30 TAC Section 39.411 adopted on December 7, 2016, and submitted on February 21, 2017;
- Revisions to 30 TAC Section 39.419 adopted on December 9, 2015, and submitted on February 21, 2017;
- Revisions to 30 TAC Section 39.603 adopted on December 7, 2016, and submitted on February 21, 2017;
- Revisions to 30 TAC Section 55.152 adopted on December 7, 2016, and submitted on February 21, 2017;

- Withdrawal of 30 TAC Section 55.156(e) from the Texas SIP as adopted on December 9, 2015, and submitted on February 21, 2017; and the
- Repeal of 30 TAC Sections 116.130 – 116.134, 116.136, and 116.137 from the Texas SIP as adopted on November 2, 2016 and submitted on February 21, 2017.

We also approve revisions to the amendatory language at 40 CFR 52.2270(c) to identify specific provisions adopted by the State not submitted for inclusion in the Texas SIP. We are revising the language at 40 CFR 52.2270(c) to clearly indicate that the Texas SIP does not include the revisions to 30 TAC Sections 39.405(h)(1)(A) and 39.602(c) as adopted on December 9, 2015, or 30 TAC Section 39.411(e)(10) as adopted on December 7, 2016.

III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the revisions to the Texas regulations as described in the Final Action section above. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 6 Office (please contact Adina Wiley for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices,

provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 27, 2018.

Wren Stenger,
Acting Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS – Texas

2. In §52.2270(c), the table titled “EPA Approved Regulations in the Texas SIP” is amended by:

- a. Revising the entries for Sections 39.405, 39.411, 39.419, 39.602, 39.603, 55.152, and 55.156;
- b. Adding an entry for Section 116.127 in numerical order under the heading “Division 1 – Permit Application”;
- c. Removing the heading “Division 2 – Compliance History” and the entries that follow for Sections 116.120, 116.121, 116.122, 116.123, 116.125, 116.126, and 116.127; and
- d. Removing the heading “Division 3 – Public Notice” and the entries that follow for Sections 116.130, 116.131, 116.132, 116.133, 116.134, 116.136, and 116.137.

The revision and addition read as follows:

§52.2270 Identification of plan.

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(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State Citation	Title/Subject	State approval/ submittal date	EPA approval date	Explanation
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Chapter 39 – Public Notice				
Subchapter H – Applicability and General Provisions				
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Section 39.405	General Notice Provisions	12/9/2015	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	SIP includes 39.405(f)(3) and (g), (h)(2)-(h)(4), (h)(6), (h)(8)-(h)(11), (i) and (j) as adopted on 12/9/2015. SIP includes 39.405(h)(1)9 A) as adopted on 6/2/2010.
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Section 39.411	Text of Public Notice	12/7/2016	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	SIP includes 39.411(a), 39.411(e)(1)-(4)(A)(i) and (iii), (4)(B), (e)(5) introductory paragraph, (e)(5)(A), (e)(5)(B), (e)(6)-(9), (e)(11)(A)(i), (e)(11)(A)(iii), (e)(11)(A)(iv), (e)(11)(B)-(F), (e)(13), (e)(15), (e)(16), (f)(1)-(8), (g), and (h) as adopted 12/7/2016. SIP includes 39.411(e)(10) as adopted on 3/26/2014.
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Section 39.419	Notice of Application and Preliminary Determination	12/9/2015	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	SIP includes 39.419(e)(1) and (e)(2).
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Subchapter K – Public Notice of Air Quality Applications				
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Section 39.602	Mailed Notice	6/2/2010	1/6/2014, 79 FR 551	SIP does not include 39.602(c) adopted on 12/9/2015.
Section 39.603	Newspaper Notice	12/7/2016	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
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Chapter 55 – Requests for Reconsideration and Contested Case Hearings; Public Comment				
Subchapter E – Public Comment and Public Meetings				
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Section 55.152	Public Comment Period	12/7/2016	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	SIP includes 55.152(a)(1), (a)(2), (a)(3), (a)(6), (a)(7), and (b).
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Section 55.156	Public Comment Processing	12/9/2015	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	SIP includes 55.156(a), (b), (c)(1), and (g).
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Chapter 116 (Reg 6) – Control of Air Pollution by Permits for New Construction or Modification				
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Subchapter B – New Source Review Permits				
Division 1 – Permit Application				
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Section 116.127	Actual to Projected Actual and Emission Exclusion Test for Emissions	2/9/2011	10/25/2012, 77 FR 65119	
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[FR Doc. 2018-09755 Filed: 5/8/2018 8:45 am; Publication Date: 5/9/2018]